HIGH COURT OF UTTARANCHAL AT- NAINITAL.

Writ Petition No. 1115 (S/S) of 2003

Ram Singh Bora, S/o Ganga Singh,
R/o K.V. Inter College, Laksar,
District Hardiwar. ….Petitioner.

Vs.

1. District Inspector of Schools, Haridwar,
2. Principal, K.V. Inter College, Laksar, Haridwar,
3. Manager of Management Committee,
   K.V. Inter College, Laksar, Haridwar. ….Respondents.

Sri S.K. Posti, learned Ad, for the petitioner,
Learned Standing Counsel for the respondents.

Hon'ble M.M. Ghidiyal, J.:

By means of this writ petition, the petitioner has prayed to issue a writ of mandamus commanding the respondents to promote the petitioner from the post of Class-IV to Class-III. The petitioner has further prayed that the respondents be directed to decide the representations of the petitioner annexed as annexure nos. 4,5,6 & 7 regarding his promotion form Class-IV to Class-III post.

Heard Sri S.K. Posti, learned counsel for the petitioner and learned Standing Counsel for the respondents.

The petitioner has submitted that he was appointed on 26.12.1991 as Class-IV employee in K.V. Inter College, Laksar, District Haridwar. His services were regularized on 17.08.1994 against the post, which fell vacant due to the retirement of one Sri Shyam Lal. The petitioner has completed more than ten years continuous service in the said institution, therefore, he is entitled and eligible for promotion to Class-III post in the said institution as per the Regulation-II, Chapter-III of Section 16(g) of U.P. Intermediate Education Act 1921. Regulation-II, Chapter-III of Section 16(G) provides as under:-

"2ि(क्रकिसी संस्था में नियुक्ति हेतु लिपिक एवं चतुर्थ वर्गीय कर्मचारियों की न्यूनतम न्नैक्षिक योग्यता वही होगी जो राजकीय उच्चतर माध्यमिक विद्यालयों के समकक्षीय कर्मचारियों के लिए समय–समय पर निर्धारित की गई हो।

ि2क्र प्रधान लिपिक एवं लिपिक श्रेणी के स्वीकृत पदों की कुल संख्या का पचास प्रतिधात संस्था में कार्यरत लिपिकों एवं चतुर्थ श्रेणी कर्मचारियों में से पदोन्नति द्वारा भरा

जायेगा यदि कर्मचारी पद हेतु निर्धारित अर्हता रखता हो तथा वह आगे पद पर 5 वर्ष्र की अविरल मौलिक सेवा कर चुका हो तथा उनको सेवा अभिलेख अच्छा हो पदोन्नति अनुपयुक्त को छोड़कर ज्येष्ठता के आधार पर की जायेगी।

इस सम्बन्ध में यदि कोई कर्मचारी प्रबन्ध समिति के किसी, निर्णय के आदेधा से व्यथित हो तेा वह उसके विरूद्ध ऐसे निर्णय या आदेधा के दिनांक से दो सप्ताह के भीतर निरीक्षक को अभ्यावेदन कर सकता है, निरीक्षक ऐसे अभ्यावेदन पर ऐसे आदेधा दे सकता है जिन्हें वह उचित समझे। निरीक्षक का निर्णय अन्तिम होगा और प्रबन्धाधिकरण न्नीघ्र कार्यान्वित किया जायेगा।

टिप्पणीः— पचास प्रतिधात पदों की संगणना करने में आधे से कम भाग को छोड़ दिया जायेगा और आधे या आधे से अधिक भाग को एक समझा जायेगा।''

The petitioner has submitted that there are 5 sanctioned posts of Assistant Clark and one post of Head Clerk. As per Regulation-2 Chapter-3 of Section 16(g) of the Act, 50% posts of total sanctioned posts should be filled by promotion from amongst the Clerks and Class-IV employees. Since the petitioner was eligible for being promoted to the Class-III post, he was the senior most amongst the Class-IV employees and had completed more than ten years of services, he applied for promotion under Regulation-II (2) Chapter-III of Section 16(g) of the Act.

This Court on 24.09.2003 has directed the respondents to file counter affidavit and in the meantime the respondents were directed to decide the representation of the petitioner. In pursuance of the order passed by this Court on 24.09.2003, the respondent Direct Inspector of Schools on 09.01.2004 has passed the order rejecting the claim of the petitioner, the petitioner by way of amendment has also challenged the order passed the respondent on 09.01.2004.

The respondents have filed counter affidavit and in the counter affidavit they have taken a stand that there are six posts in Class-III category (5 pasts of Assistant Clerk and 1 post of Head Clerk). The post of Head Clerk fell vacant on 31.07.2002 on the retirement of Sita Ram, which was filled by giving promotion to Sri Balbir Kumar. The respondents have further submitted that Sri Karn Pal Singh and Sri Om Prakash were also promoted from Class-IV to the posts of Assistant Clerk and, as such, the promotion quota was completed because out of sis posts, three persons have been promoted. One post of Assistant

Clerk was lying vacant which was filled by the respondents by adjusting Smt. Vijay Lakshmi who was previously appointed under the Dying-in-Harness Rules.

The petitioner has also annexed the appointment order dated 04.07.1973 of Sri Balbir Kumar by which he was appointed directly to the post of Assistant Clerk in the said institution. Contention of the petitioner is that, since Balbir Kumar was appointed directly as Junior Clerk, his promotion to the post of Head Clerk cannot be calculated for the purposes of filling 50% posts by way of promotion. He has submitted that 50% posts should be filled from Class-IV employees alone. I do not find force in the submission made by learned counsel for the petitioner. The Regulation-II, Chapter-III specifically states that 50% of the total strength of Head Clerk and Clerks shall be filled by way of promotion from amongst the Clerks and Class IV employees.

The petitioner has further relied on the letter of Director of Education dated 23.09.1993 issued to all the District Inspector of Schools in which it has been specifically stated that the appointment under Dying-in-Harness Rules will not affect the right of Class-IV employee for being appointed to the Class-III posts under 50% quota.

In the impugned order dated 09.01.2004, the District Inspector of Schools, Haridwar while rejecting the claim of the petitioner has mentioned that there are six posts of Class-III employees in the institution, out of which three persons were appointed by way of promotion. In the impugned order, the DIOS has also included among three persons, the name of Sri Balbir Kumar who was promoted to the post of Head Clerk from the post of Assistant Clerk and since Sri Balbir Kumar- Head Clerk, Sri Om Prakash- Assistant Clerk and Sri Karn Pal Singh- Assistant Clerk were appointed by way of promotion, the promotion quota is complete and the petitioner cannot claim for being promoted under 50% quota.

It appears that another writ petition was filed by one Kunwar Pal Singh, who was also working as a Class-IV employee in the institution, with a prayer to issue a writ, order or direction in the nature of mandamus commending the respondents to promote the petitioner against the vacancy of Class-III in the said institution and also for

compliance of the order of Joint Director of Education dated 02.06.2003. By order dated 02.06.2003, the joint Director of Education directed the District Inspector of Education to fill up the vacancy by way of promotion and he has further directed that since the petitioner Sri Kunwar Pal Singh is a scheduled caste candidate and there is no representation of scheduled caste candidate in the Institution in the Class-III employees, he should be promoted to the post of Class-III employee.

The Joint Director of Education while deciding the representation of Kunwar Pal Singh has further passed order on 2nd April 2004 that the said vacant post of Class-III employee should be filled up by way of promotion of Sri Kunwar Pal Singh in view of the fact that there was no representation of scheduled caste candidate in pursuance to the order issued by State of Uttaranchal dated 31st August 2001 by which the roster has been provided. He has further stated that in view of G.O. dated 23.09.1993, 50% quota, which is to be filled up by way of promotion from amongst the Class-IV employees, should not be affected by making appointments under dying-in-harness Rules consequently he has directed that Smt. Vijay Laxmi who was earlier appointed under dying-in-harness Rules, shall be adjusted against the post which may fell vacant in the district under direct recruitment.

It is not disputed that the petitioner as well as Sri Kunwar Pal Singh were qualified and eligible to be promoted to the Class-III post. Assuming the argument advanced by learned counsel for the petitioner that 50% of the posts in Class-III should be filled alone from Class-IV employees, the petitioner has no claim as Sri Karn Pal Singh and Om Prakash who were Class-IV employees were promoted earlier to Class-III and by order dated 02.04.2004 the Joint Director of Education has directed for promotion of Sri Kunwar Pal Singh is also from Class-IV employee and is a scheduled caste candidate to be promoted to Class-III post. Thus, by making three promotions from amongst Class-III, the quota is complete.

Learned counsel for the petitioner Sri Posti has submitted that Sri Kunwar Pal Singh is junior to the petitioner and, as such, the order of Joint Director of Education, to promote Kunwar Pal Singh on the post

of Class-III, is illegal. I do not find force in the submission made by learned counsel for the petitioner. Since there is no representation of the scheduled caste in the post of Class-III of the Institution and according the roster, the first post should go to the scheduled caste candidate, the Joint Director of Education has rightly directed the District Inspector of Schools of promote Sri Kunwar Pal Singh on the post of Class-III.

In view of the discussions above, the writ petition has no force and is dismissed as such. No order as to costs.

Sd/-

June 16, 2004:

NCM: